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U.S. Department of Homeland Security

Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 MASS, 3/F

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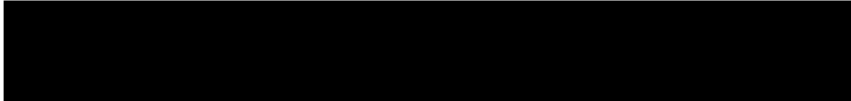
Washington, D.C. 20536



SEP 30 2003

File: [redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



identifying data deleted to  
prevent invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Cindy N. Gomez for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as an assistant pastor at a weekly salary of \$325.<sup>1</sup>

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously employed in a qualifying religious occupation or vocation for the two years immediately preceding the filing date of the petition.

On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient evidence to establish that the beneficiary qualifies for classification as a religious worker. Counsel states that the beneficiary has received religious education and credentials, and has been performing the work of a minister for at least two years prior to filing the petition.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section

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<sup>1</sup> In documentation contained in the record of proceeding, the petitioner alternately entitles the beneficiary's current and proposed position as "minister," "pastor," "pastor assistant," and "assistant pastor."

501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is a church having a congregation of 35 members. The beneficiary is a native and citizen of the Dominican Republic who last entered the United States on September 28, 1992 as a nonimmigrant visitor for pleasure (B-2).

At issue in this proceeding is whether the petitioner has established that the beneficiary was continuously employed as a pastor for at least the two years preceding the filing of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on April 23, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously carrying on the occupation of pastor since at least April 23, 1999.

In this case, a district official of the petitioning church stated that the beneficiary had been engaged on a full-time basis as an assistant pastor and missionary since July 1998, and was granted his credentials in July 1999. The official further stated that the beneficiary was given a stipend of approximately \$325 per week and provided with rent, food, transportation and other expenses.

The director concluded that in the absence of comprehensive timekeeping records, Forms W-2 (wage and tax statements), payroll receipts, etc., the evidence was insufficient to establish that the beneficiary had been continuously engaged in the religious occupation for the preceding two years.

On appeal, counsel submits copies of time sheets showing the beneficiary's work hours during a total of 42 weeks dating from July 1999 through August 2002. The evidence submitted is incomplete. It is, therefore, insufficient to establish that the beneficiary was continuously employed in a qualifying religious occupation during the required two-year period. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that: it qualifies as a bona fide nonprofit religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i); the beneficiary is qualified in the occupation; the beneficiary has been a member of the denomination for at least the two years preceding the filing date of the petition; it has the ability to pay the beneficiary the proffered wage as of the date of filing the petition and continuing until the beneficiary obtains lawful residence; the position qualifies as a religious occupation; and, it has extended a valid job offer to the beneficiary. Since the appeal will be dismissed for the reason stated above, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.